IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12686 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHENDRA PRABHUDAS PANCHOLI

Appearance:

MR DP JOSHI, AGP for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 24/12/2001

ORAL JUDGEMENT

Rule. The learned counsel Mr.Mishra appearing for the respondent waives service of Rule.

2. By way of this petition under Articles 226 and 227 of the Constitution, the petitioner, State of Gujarat

through the Executive Engineer of National Highway project has challenged the award of the Labour Court, Rajkot in Reference (LCR) No.187 of 1989 which was made on 15th April, 2000 and published thereafter.

3. The learned A.G.P. submitted on the basis of the para-wise reply supposed to have been filed in the Labour Court that the respondent was never employed by the petitioner and in any case he had failed to report for duty after the transfer of the undertaking from the National Highway authorities to the Public Workers Department in November, 1986. It was also submitted that even the earlier appointment of the respondent was on dailywage basis and the provisions of Section 25-F of the I.D.Act did not apply to the alleged termination of service of the respondent.

4. Going through the impugned award it was seen that the case of continuous service and illegal termination was made out by the respondent by examining himself in the witness-box. The petitioner had not cared to either lead any oral evidence or produce any documentary evidence, despite a specific order of the Labour Court. Thus, the proceedings before the Labour Court practically remained ex-parte and even in the petition before this Court, the faults are found with the impugned award, rather than making any statement explaining the utter lack of application of mind, lack of participation in the proceedings or possible complicity with the respondent in the Labour Court. This is also one of the many cases where a Government department shows their proclivity to prolong the litigation without any real participation at the trial Court level. And, even as the Government stands to lose the cases and millions of rupees at the cost of the exchequer, there is no indication that any action is taken against the persons or officers who, at the relevant time were in charge of the litigation.

5. As seen earlier a case is sought to be made out before this Court without any factual foundation having been laid before the Labour Court and thus these proceedings are reduced to a formality for obtaining a seal of approval on the ex-parte award obtained in the Labour Court. However, the learned counsel Mr.Mishra appearing for the respondent fairly conceded that even in absence of any concrete evidence of gainful employment of the respondent, in view of the likelihood of the respondent, having married and survived in the meantime, having sufficient income, the award of backwages may be interfered with. Accordingly, in the facts and circumstances as above, the petition is partly allowed to

the extent that the impugned award as to backwages is quashed with the further direction that the petitioner shall implement the remaining part of the award within one month from today and pay to the respondent Rs.5,000/= by way of cost alongwith 50% of backwages from the date of coming into operation of the award till the reinstatement of the respondent. Rule is made absolute accordingly with no order as to costs. A copy of this order shall be served on the Law Secretary, State of Gujarat.

(D.H.Waghela, J)
'Bhavesh'